



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF C-A-H-

DATE: JAN. 2, 2018

APPEAL TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, who works in the field of integrative medicine, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After the petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and argues that she is eligible for a national interest waiver as a member of the professions holding an advanced degree. In October 2017, we issued a request for evidence (RFE) asking the Petitioner to provide additional documentation of her eligibility as an advanced degree professional as well as evidence satisfying the three-part framework set forth in *Dhanasar*. Her response includes a brief and additional evidence.

Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

*Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

While neither the statute nor the pertinent regulations define the term “national interest,” we recently set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.<sup>1</sup> *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>2</sup>

## II. ANALYSIS

### A. Member of the Professions Holding an Advanced Degree

Although the Director concluded that the Petitioner qualifies "as a member of the professions holding an advanced degree or an alien of exceptional ability," our RFE requested additional evidence to demonstrate her eligibility. Specifically, we noted that the record reflects that the Petitioner earned a "three-year postgraduate degree" in behavioral neurology and neuropsychiatry, and a "two-year post graduate degree" in advanced science from the [REDACTED] in South Africa. In accordance with the regulation at 8 C.F.R. § 204.5(k)(3)(i)(A), we requested that the Petitioner provide an academic credentials evaluation indicating that at least one of her South African degrees is "a foreign equivalent degree" to a U.S. doctorate or master's degree.

In response, the Petitioner states that she is "eligible for EB-2 classification as a member of the professions holding an advanced degree" because she holds a "Ph.D. in Neuropsychiatry and Doctor's degree in Advanced Science and Medicine." She further provides a letter, dated November 17, 2017, from the [REDACTED] in [REDACTED] Hawaii, indicating that she has been accepted to their degree program for "a Doctorate to PhD in Integrative Medicine." She also provides transcripts from [REDACTED] indicating that she completed some coursework in December 2017 along with certificates for "CEUs" and "practitioner training."

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<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

The submission, however, does not indicate that the Petitioner has completed her degree from [REDACTED] nor does it contain an academic credentials evaluation to establish her foreign degrees' equivalency to a U.S. degree as required under 8 C.F.R. § 204.5(k)(3)(i)(A), and as requested in the RFE. We therefore find that the Petitioner has not established her eligibility as a member of the professions holding an advanced degree.<sup>4</sup>

#### B. Eligibility under the *Dhanasar* framework

The Petitioner has indicated that she serves as chief executive officer (CEO) of [REDACTED] and [REDACTED]. She has also stated she will work as a “behavioral neurologist and neuropsychiatrist” specializing in “minimizing interpersonal conflict” and using her “education and experience to serve as a motivational speaker, mediator and interventional therapist for families.” Since *Dhanasar* was issued before we adjudicated the petition, we issued an RFE to obtain additional information and evidence regarding the Petitioner's eligibility under the new framework. See 8 C.F.R. § 103.2(b)(8) (requests for evidence). Specifically, we asked the Petitioner to clarify her plans for future work. We further requested additional information regarding the Petitioner's role as CEO and how it relates to her proposed clinical practice in neuropsychiatry or her proposed research.

In response to our RFE, the Petitioner states that she intends to continue in her role as CEO of [REDACTED] and [REDACTED]. She also asserts that she has participated in cancer research and biomedical device development since 2015 and “has been working with several non-profit and for-profit organizations to establish a network” that will “help providers and medical professionals nationally and internationally navigate this change from pathology focus to one focused on wellness.” The Petitioner expresses her intent to “practice as a Neuropsychiatrist and Behavioral Neurologist as well as practice new [REDACTED] medicine once I complete my Doctorate and PhD in Integrative Medicine and become board certified.” She further writes that she will “continue her research in wellness oncology, and biomedical device development,” and that she “intends to build a medical facility that can house and accommodate patients and professionals, as well as provide advanced integrative training in leadership, therapies, modalities, and techniques.” The record includes letters of support and published articles discussing the benefits

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<sup>3</sup> In addition, we note that [REDACTED] website states that the university is “Not Accredited by an Accrediting Agency Recognized by the United States Secretary of Education.” See [REDACTED] [https://\[REDACTED\]](https://[REDACTED]) (last visited January 2, 2018, and incorporated into the record of proceedings). While the regulatory language of 8 C.F.R. § 204.5(k)(3)(i) does not specifically state that a degree must come from an accredited college or university, that requirement is implicit in the regulations. The repeated usage of the modifier “United States” to describe the different levels of (non-foreign) degrees makes clear that the regulations apply to degrees issued by U.S. educational institutions that are recognized and honored on a nationwide basis.

<sup>4</sup> In her initial filing, the Petitioner stated she sought eligibility as a member of the professions holding an advanced degree, but also claimed that she met the requirements of an individual of exceptional ability. However, she did not provide further information or evidence of her qualifications for this classification or continue to assert eligibility as an individual of exceptional ability on appeal. As such, we have limited our findings to her assertion that she meets the requirements for a second preference petition as an advanced degree professional.

of her proposed areas of research. Accordingly, we find that the Petitioner's proposed work has substantial merit.

With respect to the national importance of the Petitioner's proposed endeavor, our RFE asked for evidence documenting the "potential prospective impact" of her work. In response, the Petitioner reiterates that she intends to continue her work as CEO and continue her research but she does not sufficiently clarify how her role as CEO relates to her research. Nor does she adequately explain the details and potential implications of her work developing a network to help medical providers focus on wellness. Furthermore, while the Petitioner indicates that she intends to establish a medical facility "under the umbrella of [REDACTED]" she has not provided sufficient information and documentation about the size, locality, and staffing of this establishment, or about the population she proposes to serve, to show its prospective impact.<sup>5</sup> As the Petitioner has not demonstrated that these proposed activities satisfy the "national importance" element of the *Dhanasar* framework's first prong, we will limit the remainder of our analysis to her proposed research.

To the extent that the Petitioner proposes to conduct integrative cancer research and development into biomedical devices, we find the evidence sufficient to demonstrate that such research is of national importance. The Petitioner submits articles from the [REDACTED] and several peer-reviewed journals describing the need for alternative cancer treatments. Thus, the record shows that research in this area stands to have broader implications beyond any one company or organization, whether through the development of biomedical devices for integrative medicine or through research for dissemination to others in the field through professional journals and conferences. As the Petitioner has documented both the substantial merit and national importance of her proposed research, she meets the first prong of the *Dhanasar* framework.

With respect to the second prong of the *Dhanasar* analysis, however, the Petitioner has not demonstrated a record of success or progress in her field, or a degree of interest in her work from relevant parties, rising to the level of rendering her well positioned to advance her proposed research. *See Dhanasar*, 26 I&N Dec. at 890. The record includes a copy of the Petitioner's résumé, professional memberships, training credentials, and documentation of her attendance at continuing education seminars. In the appellate submission, the Petitioner states that her research in biomedical device development has led to cancer tumor suppression, assisted in autoimmune function and disorders, and been used for monitoring pain and improving quality of life.

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<sup>5</sup> We note that even if the Petitioner had shown that the proposed medical facility's prospective impact would rise to the level of having national importance, she has not demonstrated that she is well positioned to start the business she has described. The Petitioner broadly described her plans for the facility and the services it would offer, and she identified a potential building site. However, she has not provided a business plan or other detailed model for the establishment, evidence or information demonstrating a history of success in any similar entrepreneurial endeavors, or documentation showing the interest of relevant parties in her proposal. Accordingly, she would not meet the second prong of the *Dhanasar* analysis.

The record contains several articles written by the Petitioner that discuss integrative medicine and mind-body connection, and she states on appeal that she has self-published 10 books related to her field of expertise. The record does not, however, include evidence that this work constitutes a record of success or otherwise renders her well positioned to advance her proposed research. The Petitioner has not presented documentation illustrating the significance of her written work, or establishing that her research has been implemented, utilized, or applauded by those viewing it.<sup>6</sup>

The Petitioner additionally points to her contributions to the development of an ultraviolet light irradiation therapy developed by [REDACTED] and protocols from [REDACTED]. The record contains a letter from [REDACTED] chief science officer at [REDACTED] noting that the Petitioner is a member of their clinical advisory team and has “provided tremendous medical and biochemical insight to help fortify the use and development” of the company’s medical devices. However, he does not explain the Petitioner’s role in the development of these treatments, the extent to which they have been used by other interested parties, or otherwise describe how her contributions to the development of these devices shows a record of success in her field or interest in her work from relevant parties.

Similarly, the record includes a letter from [REDACTED] of the [REDACTED] in [REDACTED] Texas. [REDACTED] comments that the Petitioner’s skills and expertise set her apart from other practitioners in the field, and he refers to an ultra violet laser blood irradiation research study in which he and the Petitioner participated. He does not explain the nature of her contribution or offer sufficient detail regarding the study explaining how her work renders her well positioned to advance the proposed endeavor.

In response to the RFE, the Petitioner provides a letter from [REDACTED] director of [REDACTED] states that he invited the Petitioner to participate in their clinical research program and that his organization “uses [the Petitioner’s] original techniques, modalities, and programs, because it effectively solves problems with overdosing, side effects, epigenetics and [REDACTED] effects.” He does not, however, identify the “techniques” or “modalities” or offer any additional information or evidence to support his statements.

In sum, while these and other letters attest that the Petitioner is respected by her peers, the authors do not sufficiently explain how her work has been influential among integrative medicine practitioners, has served as an impetus for progress or generated positive discourse in the field, or otherwise represents a record of success or progress rendering her well positioned to advance her proposed research.

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<sup>6</sup> Although the Petitioner states that “[a]fter publishing [REDACTED] I was invited to be a keynote speaker to the [REDACTED] 2018 held in [REDACTED] Michigan,” she does not provide sufficient supporting documentation to demonstrate the significance of this conference or her claimed invitation as keynote speaker.

Finally, with regard to the third prong of the *Dhanasar* analysis, the Petitioner has not established that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. She has not, for instance, provided information or evidence outlining why a labor certification would be impractical in her case; whether the United States would benefit from her contributions even if other U.S. workers are also available; or whether urgency warrants foregoing the labor certification process. In addition, as the Petitioner has not established that she is well positioned to advance her proposed research as required by the second prong of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

### C. Ineffective Assistance of Counsel

On appeal, the Petitioner asserted that prior counsel did not submit all supporting documentation and evidence to establish her eligibility and that she “[has] a complaint against the filing attorney.” In our RFE, we noted that the Board of Immigration Appeals established a framework for asserting and assessing claims of ineffective assistance of counsel, and that she had not met the evidentiary requirements set forth in that case. *See Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff’d*, 857 F.2d 10 (1st Cir. 1988).

In response, the Petitioner indicates that she has filed a complaint for ineffective assistance of counsel against her former counsel, though she does not submit a copy of the complaint as required. In addition, she states: “To the extent that *Lozada* is applicable, this was a direct appeal of the denied I-140 and the AAO has provided petitioner a chance to meet the new framework, which she, respectfully, has done.” As the Petitioner has not met the relevant evidentiary requirements set forth in *Lozada*, we will not further consider her ineffective assistance of counsel claim. Regardless, as our review is *de novo*, we have considered the entire record including submissions first submitted on appeal and in response to our RFE.

## III. CONCLUSION

The Petitioner has not established eligibility as a member of the professions holding an advanced degree or as an individual of exceptional ability. Furthermore, as the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, she has not established eligibility for a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.

Cite as *Matter of C-A-H-*, ID# 615910 (AAO Jan. 2, 2018)